IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTIETH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO : 15755 of 2005

Between:

1 P. Nageswara Rao S/o. Late Pennani Venkata Ramana,
Visakhpatnam District,
2 P. Narasimha Murhty S/o. Late Pennani Venkata Ramana,
Visakhpatnam District,

..... PETITIONERS

AND

1 District Collector, Visakhapatnam District, Visakhapatnam,
2 Mandal Revenue Officer, Pendurthi Mandal, Pendurthi, Visakhapatnam,
3 M. Venkata Rao Engineering Contractor, C.B.M. Compound,
Visakhapatnam,

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction, more particularly one in the nature of writ of Mandamus, declaring the action of the respondents 1 and 2 in permitting the 3rd respondent to excavate and to remove the cashew trees and mango trees in the petitioners land high handedly in Sy.No. 487/1 admeasuring Ac. 4.82 cents at Narava Village, Pendurthi Mandal, Visakhapatnam District, is arbitrary, bad and illegal and violative of Article-300A of the constitution of India, consequently direct the respondents to pay damages a) Rs. 1 lakh per year towards loss of yearly income from cashew and mango trees for further period of 20 years and b) to pay Rs.

10 lakhs towards excavation of land for 10 feet depth in survey No. 487/1 admeasuring Ac. 4.82 cents at Narava (V) Pendurthi Mandal, Visakhapatnam District in the interest of justice.

Counsel for the Petitioner: MR.KURITIBHASKARA RAO

Counsel for the Respondent Nos. 1 & 2: GP FOR REVENUE

Counsel for the Respondent No.3: --None appeared.

The Court, at the stage of admission, made the following:

Oral order:

This writ petition is filed seeking a direction to the respondents to pay Rs. 1,00,000-00 per year towards loss of yearly income from cashew and mango trees for further period of 20 years; and to pay Rs. 10,00,000-00 towards excavation of land for 10 feet depth in survey No.487/1 ad-measuring Ac. 04-82 cents at Narava village, Pendurthi mandal, Visakhapatnam district by declaring the action of the respondents 1 and 2 in permitting the 3rd respondent to excavate the earth and remove the cashew trees and mango trees in the lands of the petitioners as illegal and arbitrary.

Head the learned counsel for the petitioner and the learned Government Pleader for respondents.

It is submitted that the 1st respondent granted quarry lease to 3rd respondent for two years in Survey No.29 with certain conditions to meet the requirement of gravel at large quantity for laying road by National Highway Authority of India, that the 2nd respondent was permitted to issue no objection certificate for grant of quarry lease for gravel in an extent of Ac.20-00 in survey No.29 of Narava village, Pendurthi Mandal, Visakhapatnam district. It is further submitted that the total extent of Survey No.29 of Narava village is Ac.10-00 out of which Ac.4-82 centss of land was allotted to the father of the petitioners in the year 1961 who developed the land by raising cashew nut and mango plants and that the age of the trees is 35 years. A condition also stipulated while granting lease that gravel should be excavated only beyond the distance of 100 meters on each side of gas pipe line land erected by HPCL and VVPL and should not cause ecological imbalance or cause any damage to any government property; that the land allotted to the petitioners in survey No.29 is entirely different and the distant from the land allotted to the 3rd respondent, but the 3rd respondent highhandedly with large number of workmen with excavating vehicle have removed the gravel 10 to 15 feet depth in the lands of the petitioners and caused damage to the extent of Rs.10,00,000-00; that the 3rd respondent also excavated the gravel even adjacent to gas pipeline provided by HPCL And VVPL

contrary to the conditions laid down in the proceedings dated 26-09-2002. The 3rd respondent has deliberately violated 100 meters distance said to have been mentioned by him and excavated gravel by keeping distance of five feet. The father of the petitioners had brought this fact to the notice of the authorities by way of oral and written representations, but no action has been taken; that on account of the death of the father of the petitioners, petitioners made representations to the authorities but were informed that the representations were misplaced. It is submitted that the 3rd respondent has removed some of their mango trees and cashew nut trees causing loss to them. Telegrams were also sent to the authorities in addition to the representations. No reply was received from the Mandal Revenue Officer. Therefore, this writ petition is filed seeking the relief adverted above.

There are disputed questions of facts as to whether the 3rd respondent has removed the earth from the land of the petitioners and cut the trees as stated by them; and if so what are the total number of trees removed by the 3rd respondent while excavating the land. These are the issues, which can be adjudicated by filing a regular civil suit claiming compensation. On the other hand, the District Collector in his order granting lease, it is mentioned that 3rd respondent is permitted to excavate the gravel only. Therefore, the relief sought in this writ petition cannot be granted by this court invoking the jurisdiction under Article 226 of the Constitution of India. The petitioners, if so advised, can approach the competent civil court and file a suit for awarding compensation/damages after following the due procedure under law.

The writ petition is, accordingly, disposed of. No costs.

ELIPE DHARMA RAO, J

Dt. 20-07-2005

Pvks/*

To

1 District Collector, Visakhapatnam District, Visakhapatnam,
2 Mandal Revenue Officer, Pendurthi Mandal, Pendurthi, Visakhapatnam,
3 M. Venkata Rao Engineering Contractor, C.B.M. Compound, Visakhapatnam.

4. 2 CCs., to the learned Government Pleader for Revenue, A.P. High Court Buildings, Hyderabad (OUT).

5. 2 CD copies

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